

FISH & WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: December 11, 2014

Agenda Item: Commercial Use Administrative Rules

Division: Fisheries and Wildlife

Action Needed: Final

Time Needed on Agenda for this Presentation: 10 minutes

Background

In October, the F&W Commission, in conjunction with the Parks and Recreation Board, proposed an amendment to the Commercial Use Administrative Rules that would allow a guide to collect fees from clients when conducting permitted use on behalf of a permitted outfitter. The proposed changes specified that the payments must: a) not be cash; b) name the outfitter that hired or contracted the services; and c) be directly deposited to the outfitter that hired or contracted the guide. These proposed changes were intended to make it easier for an outfitter to collect payments from a client, while also retaining FWP's ability to help prevent illegal outfitting by a guide.

Public Involvement Process & Results

As of December 1, FWP received two comments on the proposed amendments. The Fishing Outfitters Association of Montana (FOAM) recommended that the Commission (and the board) replace the language proposed in October with new language that is aligned with the Montana Board of Outfitters (MBO) administrative rules regarding collection of client fees. FOAM recommended new language that would allow a guide to collect client fees as long as the guide has the expressed consent of the outfitter, and that the fees are deposited only to the outfitter's account. FOAM noted that this approach, in contrast to the language proposed in October, would help to avoid confusion that might arise resulting from two different fee collection standards (FWP, MBO). FOAM agreed with the Commission and board's original proposal to allow a guide to receive a cash tip separate from the client fee. Another comment agreed with most of the proposed amendments except the proposal to not allow cash payment. This person, a guide, noted that most travelers wanting a guided trip don't carry a check and most guides are not equipped to take credit card payment. The comment period ends on Dec. 5; FWP will provide the Commission and board with additional comments received by the deadline.

Alternatives and Analysis

The Commission could adopt the language proposed in October, which states that when a guide collects client fees on behalf of an outfitter, the payment must not be cash and must name the outfitter who hired or contracted the services. As noted by the comments, the language prohibiting cash payments is problematic for the outfitting industry, which commonly receives cash payments from clients.

Agency Recommendation & Rationale

FWP recommends that the Commission and board adopt new language that specifies that a guide may collect client fees as long as they have the expressed consent of the supervising outfitter, and that client fees are directly deposited to the outfitter that hired or contracted the guide. FWP also recommends that the Commission and board adopt the proposed language that would allow a guide to receive tips separate from the client fees. This new language would be more consistent with MBO administrative rules, better suited to the outfitting industry needs, and still enable FWP to help prevent a guide from illegally operating as an outfitter.

Proposed Motion

I move the Commission adopt the amended language as presented by FWP, pending adoption by the State Parks and Recreation Board.